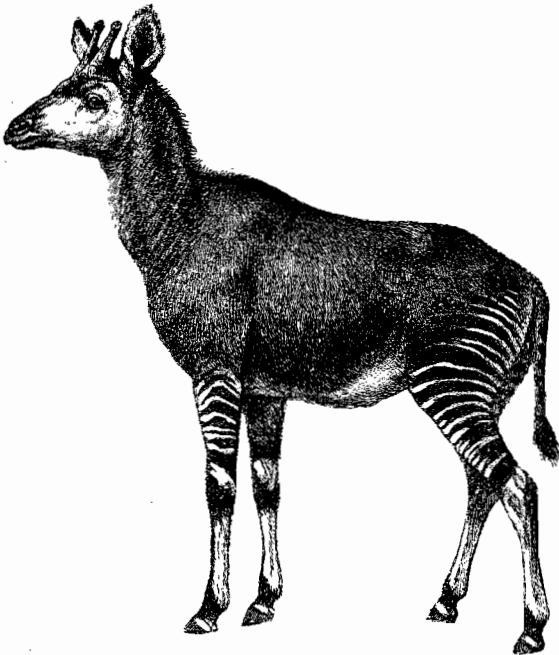


of that contract. For example, many parents sign contracts with day care centers to watch over and tend to their children. So, is it so "natural" to believe that, with only marginal exceptions, only those who subscribe to a contract containing principles of justice are to benefit from the guarantees of justice? Even though nonhuman animals cannot be parties to a contract, it does not follow that they could not be intended beneficiaries of that contract. Consequently, if the participants in the original position can be incarnated as any of the intended beneficiaries of the contract they devise—a contract designed to overcome the distributive shortcomings of utilitarianism—they could be incarnated as nonhuman animals.

#### References

- William James, *Essays in Pragmatism*, ed. A. Castell (New York: Hafner, 1948).
- D. D. Raphael, *Moral Philosophy* (Oxford: Oxford University Press, 1981).
- John Rawls, *A Theory of Justice* (Cambridge, MA: Harvard University Press, 1971).
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## Reply: Rawls: Rejecting Utilitarianism and Animals

Lilly-Marlene Russow

As is his custom, Professor Sapontzis begins his reply with a masterful reconstruction of my basic argument, the better to pinpoint the exact nature of our disagreement. His reconstruction is entirely accurate and fulfills its function admirably. It allows us to focus directly on the key issue: the proper interpretation of and justification for Premise C: "Individuality, in the morally significant sense, involves [for Rawls] having and caring about a life-plan."

In my paper, I argued that this premise could be justified by Rawls's rejection of utilitarianism and that it, in turn, justified excluding most nonhuman animals from the original position. Sapontzis contends, in contrast, that Rawls's rejection of utilitarianism is too weak to support Premise C. He thinks that Rawls rejects utilitarianism primarily because it lacks a fair principle of distribution and argues that a demand for justice and fair distribution does not yield any conclusions about the relevance or importance of life-plans. He concludes that Rawls's exclusion of animals springs from his contractarian bent rather than from his rejection of utilitarianism. If this is correct, Rawls's position is much less interesting and plausible: many arguments (most notably, "marginal case" sorts of arguments) discredit generally contractarian approaches from the outset, while critiques of utilitarianism are more likely to demand serious and sustained attention.

Sapontzis is correct in claiming that Rawls is concerned about utilitarianism's apparent willingness to countenance unjust distributions; however, I think Rawls's objections go beyond that. Another,



## DISCUSSION

more basic, element in his critique attacks utilitarianism's attempt to make one characterization of "the good" apply to all—in Rawls's terms, its attempt to have a "thick" theory of the good prior to or as basic as a theory of right. *That* is the element that leads Rawls to see the ability to have and care about life-plans as morally relevant.

The argument is too complicated to deal with adequately here, but the basic idea is that Rawls rejects utilitarianism in part because he thinks an adequate moral theory must, in contrast to any sort of teleological theory, provide an account of right that is *not* dependent on a previously defined and general concept of 'the good.' Part of his justification for this position is the assumption that different people will inevitably make different choices and that one cannot generalize from individual rational choice to rational choice for society.<sup>1</sup> This leads to the idea that the capacity to define a good of one's own, to choose and care about that good, is morally relevant. That, in turn, leads Rawls to his emphasis on life-plans. The progress along this path is by no means inevitable; my point is that we must focus on this aspect of Rawls's argument, not his contractarianism, to evaluate his exclusion of animals.

The same point can be put into a slightly different context. Rawls and Tom Regan agree that an individual subject—a moral person or a subject-of-a-life—has moral significance, but they disagree about what features of the subject make it morally relevant. Why should we respect individuals as distinct subjects, each on his/her/its own terms? Rawls and Regan answer this question differently, and we need to see how Rawls justifies his answer. I have been arguing that his answer is tied to his rejection of utilitarianism and its theory of the good, and his subsequent focus on the ability to formulate, choose, and care about life plans.

I would like to close on a different note. Sapontzis asks "under what conditions can a being who benefits from just treatment be denied the guarantees of justice?" If the ultimate topic is nonhuman animals, one must ask a prior question: "Can most nonhuman animals benefit from just treatment?" That, I submit, is an ambiguous question. Clearly, animals would benefit if goods were distributed more equitably ("more justly" would beg the question against Rawls) than they are now. It is not at all obvious that an act's *being just* makes it better, other things being equal, for a nonhuman animal; in that sense, *just* treatment—

as distinct from benevolent, generous, or sympathetic treatment—may not be a benefit to nonhuman animals.

#### Notes

<sup>1</sup> John Rawls, *A Theory of Justice* (Cambridge: Harvard University Press, 1971), pp. 25-31.

## Announcement

The Culture and Animals Foundation and the Rutgers Animal Rights Law Clinic are pleased to announce the upcoming conference A NEW GENERATION FOR ANIMAL RIGHTS, a national conference for college students and teachers. The conference will take place at the New Brunswick Campus of Rutgers University during the weekend of July 29 through August 1, 1993.

During the conference we will explore a diversity of issues, including establishing coalitions with other social justice movements; planning and undertaking acts of civil disobedience; resolving conflicts within the movement and beyond. Students and animal rights scholars will present work on history, philosophy, and other animal rights scholarship. In addition, we will focus on activism, sharing success stories and ideas about what student can do on their campuses.

We are seeking students who are interested in presenting original work in the field of animal rights, and are establishing a scholarship fund for those who would like to participate. If you are interested in presenting work or would like to receive information concerning the conference, please write:

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Chapel Hill, North Carolina 27516  
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or FAX: (919) 942-3875